



DEPARTMENT OF THE NAVY

OFFICE OF THE CHIEF OF NAVAL OPERATIONS

2000 NAVY PENTAGON

WASHINGTON, DC 20350-2000

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Ser DNS-36JP/14U105780

3 Jul 14

Mr. Jacob Gross
Harper's Magazine
666 Broadway, 11th Floor
New York, NY 10012

Dear Mr. Gross:

SUBJECT: YOUR FREEDOM OF INFORMATION ACT REQUEST;
FOIA CASE NUMBER DON2012F100064
FOIA TRACKING NUMBER DON-NAVY-2012-000117

This is in response to your Freedom of Information Act (FOIA) request dated September 26, 2011. Your request was received in our office on October 11, 2011.

Please be advised that, as of February 1, 2014, DON joined FOIAonline as a participating agency. As a result of this transition, the tracking number of your FOIA request has been changed from Case Number DON2012F100064 to DON-NAVY-2012-000117.

A search of our offices for potentially responsive documents produced approximately 453.5 megabytes of data across 777 files. Upon review, we determined that 665 of these files (approximately 301 megabytes) contain attorney work-product privileged material, attorney-client privileged material, deliberative process privileged material, are predecisional in nature, and/or contain working versions of documents, and are thus exempt from disclosure under 5 U.S.C. § 552(b)(5). These records were originated by or in concert with the Office of the Judge Advocate General, containing research and briefing materials to prepare senior leadership for Congressional and Departmental briefings on the repeal of "Don't Ask, Don't Tell." As a result, they represent records prepared by an attorney in contemplation of litigation and/or confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice.

Upon review of the remaining 152.5 megabytes of data across 112 files, we determined that 150.5 megabytes of data across 86 files are copies of files owned and maintained by DoD offices outside DON or originated by entities not subject to the FOIA

(including documents produced by the public and available for public consumption). DoD has advised that you have filed similar requests with DoD offices outside DON, and those requests are currently being processed, or have already been completed. Therefore, to avoid any further delay in the processing of your request, these 86 files are not being reviewed for releasability by this office.

Of the remaining two megabytes of data across 26 files, seven documents contain personally identifiable information (e.g., names, phone numbers, and email addresses), which is exempt from disclosure under 5 U.S.C. § 552(b)(6), since release of this information would result in a clearly unwarranted invasion of their personal privacy. Additionally, one of those seven records included attorney-client privileged material which is exempt from disclosure under 5 U.S.C. § 552(b)(5). Redacted copies of these records are provided to you. Upon review, two documents - draft responses to congressional representatives - were determined to not be responsive to your request. The other seventeen documents are released to you in their entirety.

Because your request is partially denied, you are advised of your right to appeal the denial of your request by writing to:

Office of the Judge Advocate General
1322 Patterson Ave, SE, Ste 3000
Washington Navy Yard, DC 20374-5066

Your appeal must be postmarked within sixty calendar days from the date of this letter. A copy of your initial request and this letter must accompany the appeal. The appeal should be marked "FREEDOM OF INFORMATION APPEAL" both on the envelope and the face of the letter. In order to expedite the appellate process and ensure full consideration of your appeal, your appeal should contain a brief statement of the reasons you believe this decision to be in error.

Additionally, the 2007 FOIA amendments directed the Chief FOIA Officer of each agency to designate one or more FOIA Public Liaisons. Please be advised that the DON FOIA Public Liaison is available to assist in disputes between the requester and the agency. The role of the Liaison is to provide FOIA requesters with an avenue to raise concerns about the service received from a Navy Requester Service Center. You may write to the DON FOIA Public Liaison at Department of the Navy Chief Information Office (DON CIO), 1000 Navy Pentagon, Washington, DC 20350-1000. Alternately, you may contact the DON FOIA Public Liaison via telephone at (703) 695-1297, via fax at (703) 614-4388, or via email at DONFOIAPublicLiaison@navy.mil.

In this instance, the fees associated with the processing of this request were below the minimum threshold and have not been assessed. Please be advised, however, that fees, fee categories, and fee waivers are determined on a case-by-case basis, and a previous determination has no influence on future determinations.

Questions regarding the action this office has taken during the processing of your request may be directed to our FOIA service center at (202) 685-0412.

Sincerely,

A handwritten signature in black ink, appearing to read "Robin Patterson", with a large, sweeping flourish extending to the right.

ROBIN PATTERSON

Head, DON PA/FOIA Program Office